

State of Tennessee
Certificate of Escrow Compliance Form
(Tenn. Code Ann. §§ 47-31-103, *et seq.*)
Instructions and Definitions



GENERAL INFORMATION

Who is required to file a Certificate of Escrow Compliance? Any Tobacco Product Manufacturer that: (1) sold Cigarettes (including roll-your-own and little cigars if they meet the statutory definition of Cigarette) to consumers within the State of Tennessee (whether directly or through any distributor, retailer, or similar intermediary or intermediaries during the preceding calendar year); and (2) has not become a Participating Manufacturer to the tobacco Master Settlement Agreement executed on November 23, 1998. Please note this Certificate of Escrow Compliance form is in addition to any Certification application required pursuant to Tenn. Code Ann. §§ 67-4-2601, *et seq.* and any rules and regulations promulgated thereunder.

Who is a Tobacco Product Manufacturer? A Tobacco Product Manufacturer is the entity that fabricates or assembles the Cigarettes.

What is a Qualified Escrow Fund? Tobacco Product Manufacturers are required to establish a “Qualified Escrow Fund” as defined by Tenn. Code Ann. § 47-31-102(6). This means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any Tobacco Product Manufacturer having assets of at least one billion dollars (\$1,000,000,000). The escrow arrangement must: (1) require that the financial institution hold the escrowed funds’ principal for the benefit of the State of Tennessee (and other “Releasing Parties” as defined in the Master Settlement Agreement); and (2) prohibit the Tobacco Product Manufacturer placing the funds into escrow from using, accessing or directing the funds’ principal except as consistent with Tenn. Code Ann. § 47-31-103(a)(2)(B).

Where do I find the model Tennessee Escrow Agreement? You can find the agreement at www.attorneygeneral.state.tn.us or request a copy by calling the Tobacco Enforcement Division at (615) 741-8721. You are required to use the model escrow agreement unless any changes are approved in advance in writing by the Attorney General. If you propose to alter or change the model Escrow Agreement in any way, you must submit a redline copy of the escrow agreement readily and clearly marking any changes or additions made to the State form. In the redline copy of your proposed escrow agreement, any proposed additions to the model should be double underlined in the redline copy and any deletions should be marked using the ~~strike out~~ markings. You must also submit an executed non-redlined escrow agreement.

Where can I find the official Certificate of Escrow Compliance forms? You can find the Certificate of Escrow Compliance forms at www.attorneygeneral.state.tn.us or request a copy by calling the Tobacco Enforcement Division at (615) 741-8721.

When is the escrow deposit due? Deposits into the Qualified Escrow Fund must be made on or before April 15th of the year following the sales year (*e.g.*, the deposit for the 2005 sales year is due on or before April 15, 2006).

When is the Certificate of Escrow Compliance due? Every Tobacco Manufacturer currently selling in Tennessee should execute and file on or before April 30 of the year following the sales (*e.g.*, the Certificate for the 2005 sales year is due on or before April 30, 2006).

What happens if a Tobacco Product Manufacturer fails to certify in time? The Tobacco Product Manufacturer may be removed from the State’s Directory without further notice. You may also be subject to legal action pursuant to state and federal law, regulation and rule.

Where must the Certificate of Escrow Compliance be filed? An original and copy must be filed with the Tennessee Attorney General's Office, Tobacco Enforcement Division at the addresses listed below in the instructions. Revised Certificates are also due no more than thirty (30) calendar days after discovery of inaccurate, incomplete or misleading information in a Certificate of Escrow Compliance.

What is the applicable law relating to this Certificate of Escrow Compliance? Tennessee's Tobacco Manufacturer's Escrow Fund Act of 1999, Tenn. Code Ann. §§ 47-31-101, *et seq.* and any rules and regulations promulgated thereunder.

When does a Tobacco Product Manufacturer need to file a Revised Certificate of Escrow Compliance? A Tobacco Product Manufacturer must file a Revised Certification whenever information provided on the Certificate becomes inaccurate, incomplete or misleading. Such Revised Certificate must be filed within 30 days after the information becomes inaccurate, incomplete or misleading.

Please carefully review these definitions and instructions prior to completing the Certificate of Escrow Compliance Form and compiling the necessary information.

You are required to follow these Definitions and Instructions when submitting the requested documents to this Office. Failure to follow the Definitions and Instructions may result in your Certificate of Escrow Compliance being returned to you unprocessed.

DEFINITIONS

The following definitions should be used when completing the Certificate of Escrow Compliance:

1. **"Affiliate"** means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for the purposes of this definition, the term "owns", "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more.
2. **"Applicant", "The Company", "Your Company", "You" or "Company"** means the entity filing the Certificate of Compliance, its officers, directors, owners, employees and/or agents and includes each and every business entity which has merged into it, has comprised or comprises some part of its operations, or is closely related to it or otherwise affiliated to it during the period of its operations.
3. **"Brand Family"** means all styles of Cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to, "menthol," "lights," "kings," "100s," and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical to or similar to, or identifiable with, a previously known brand of Cigarettes.
4. **"Cigarette"** has the same meaning as in Tenn. Code Ann. § 47-31-102(4). The term "cigarette" includes Roll-your-own 'RYO' tobacco (0.09 ounces of which constitutes one individual "Cigarette") and those Cigarettes that, despite being sold as 'little cigars', meet the definition of "Cigarette" in Tenn. Code Ann. § 47-31-102(4).

5. **“Directory”** means the listing of Tobacco Product Manufacturers and Brand Families created and maintained pursuant to Tenn. Code Ann. § 67-4-2602.
6. **“Document(s)”** means all writings or any other record of any kind, including originals and each and every non-identical copy (if different from the original for any reason). The term “document(s)” includes, but is not limited to:
 - (a) correspondence, memoranda, notes, diaries, calendars, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, and interoffice and intraoffice communications;
 - (b) notations (of any sort) of conversations, telephone calls, meetings, and other communications;
 - (c) bulletins, printed matter, computer printouts, computer generated output, teletypes, telefax, electronic mail, invoices, worksheets, drafts, alterations, modifications, changes, and amendments of any kind;
 - (d) photographs, charts, graphs, sketches, microfiche, microfilm, videotapes, video recordings, and motion pictures; and
 - (e) any electronic or mechanical, records or representations of any kind (including, but not limited to: tapes, cassettes, diskettes, audio recordings, and computer hard drives and other storage).
7. **“Master Settlement Agreement”** has the same meaning as set forth in Tenn. Code Ann. § 47-31-102(5).
8. **“Non-Participating Manufacturer”** or **“NPM”** means any Tobacco Product Manufacturer that is not a Participating Manufacturer.
9. **“Participating Manufacturer”** has the same meaning given that term in Section II(j) of the Master Settlement Agreement and amendments thereto.
10. **“Person”** means any natural person, public or private corporation (whether or not organized for profit), governmental entity, partnership, committee, individual, group of persons, association, cooperative, joint venture, sole proprietorship, or other legal entity wherever located. In the case of a business or legal entity, “person” includes each of its parents and each subsidiary, division, and affiliate of it or any of its parents; each predecessor or successor of any of them; each present or former officer, director, manager, employee, or agent of any of them; and each person who is acting or purports to act on behalf of any of them. In the case of a natural person, “person” includes each present or former employee, or agent of person.
11. **“Qualified Escrow Fund”** has the same meaning as the term defined at Tenn. Code Ann. § 47-31-102(6).
12. **“Tobacco Product Manufacturer”** has the same meaning as set forth in Tenn. Code Ann. § 47-31-102(9). Tennessee law provides that the “Tobacco Product Manufacturer” is the entity that fabricates or assembles the cigarettes.

13. **“Units Sold”** has the same meaning as term defined in Tenn. Code Ann. § 47-31-102(10).

GENERAL INSTRUCTIONS.

A. **Complete all forms by typing or printing legibly in blue permanent ink.** You may complete the forms on-line. However, all signatures executed in blue permanent ink.

B. **You must use official State forms.** You are required to use the official form to submit your Certificate of Escrow Compliance, Model Escrow Agreement and/or Affidavits. You may not create your own Certificate of Escrow Compliance or any other form.

C. **Number of copies.** You are required to provide one signed original of your Certificate of Compliance, attachments, and responses for your Certificate of Escrow Compliance to be considered complete.

D. **Addresses for filing.** You should send your completed Certificate of Escrow Compliance, attachments and responses to the appropriate addresses for the Tennessee Attorney General:

For postal service delivery:

Tennessee Attorney General’s Office
Tobacco Enforcement Division
Attn: Certification of Escrow Compliance
Post Office Box 20207
Nashville, TN 37202-0207

For overnight courier delivery:

Tennessee Attorney General’s Office
Tobacco Enforcement Division
Attn: Certification of Escrow Compliance
425 Fifth Avenue North, Cordell Hull Building
2nd Floor
Nashville, TN 37243

E. **Time frame for production.** Unless otherwise indicated, documents required to be produced for the Certificate of Escrow Compliance include each and every document prepared, sent, dated, received, in effect, or which otherwise came into existence during the period from May 26, 1999 to the date of submission of the Certificate of Escrow Compliance by the Applicant.

F. **All documents regardless of location.** To be a complete Certificate of Escrow Compliance, the Applicant must produce all documents responsive in the Applicant’s possession, custody or control without regard to the physical location of the documents.

G. **Originals.** Documents to be produced shall be originals unless otherwise indicated. If the Applicant’s “original” is a copy, that copy should be produced as the original.

H. **No responsive documents.** If the Applicant possesses no documents responsive to a requirement on the Certificate of Escrow Compliance, the Applicant must state this fact, specifying the paragraph(s) or subparagraph(s) concerned in the response.

I. **Assertion of privilege.** If the Applicant asserts a privilege in response to the requirement to produce a document on the Certificate of Escrow Compliance form, the Applicant must state the privilege, basis for the privilege, and identify the documents to which the privilege attaches.

J. **Numbering of documents.** The Applicant should identify each and every document produced in response to the Certificate of Escrow Compliance with the initials of the Applicant. Each and every document should be numbered consecutively, commencing with number one (1). (Note: These initials and numbers should appear in the lower right-hand corner of each document.) Required documents should be placed in a separate enclosure (*e.g.*, folder or file) and the enclosure should be labeled with the Applicant's name, date and year of the certification response, and indication as to which paragraph or subparagraph of Certificate of Escrow Compliance form to which the enclosed documents are responsive. If a document is responsive to more than one Certificate of Escrow Compliance form request, then the Applicant should indicate each and every document request to which the document is responsive.

K. **English Translation Required.** The Certification form, all required attachments, requested and required Documents must be completely TRANSLATED in English. If any Document(s) to be provided contain words, information or other written communication which are not in English, you must provide a translation of the Document along with the original untranslated document. In addition, you need to provide an affidavit executed before a notary from the translator certifying the translation of the document is a true and correct translation of the original untranslated Document.

L. **Not applicable.** If any section of the Certificate of Escrow Compliance form is not applicable to your company, please clearly state "not applicable" where relevant. You should include an explanation of why the particular section does not apply to your company.

SPECIFIC INSTRUCTIONS

Part I. Tobacco Product Manufacturer Information. Use additional paper as necessary to provide full and complete responses to each request for information.

Part II. Non Participating Manufacturer Qualified Escrow Account. Use additional paper as necessary to provide full and complete responses to each request for information.

Escrow calculation and deposit for sales in Tennessee for calendar year sales.

- A. Sales Year: Indicate the sales year for which you are completing the Certificate.
- B. Units sold: Write the number of individual cigarettes, including little cigars and "roll-your-own," (.09 ounces of which constitutes one (1) individual cigarette) sold in Tennessee, whether sold directly or through a distributor, retailer or similar intermediary or intermediaries, during the sales year as measured by excise taxes collected by the state on packs or "roll-your-own" tobacco containers bearing the excise tax stamp of Tennessee.
- C. **Amount of Deposit:** First, calculate the base deposit amount by multiplying the number of Units Sold by the statutory rate for the appropriate sales year. The statutory rates by year since 1999 are as follows:

sales year 1999	\$.0094241 per unit sold after May 26, 1999;
sales year 2000	\$.0104712 per unit sold;
sales years 2001-2002	\$.0136125 per unit sold;
sales years 2003-2006	\$.0167539 per unit sold; and
sales years 2007-forward	\$.0188482 per unit sold.

Second, calculate the total deposit amount by (1) multiplying the base deposit amount by the

appropriate inflation adjustment (3% for 1999, 6.48841% for 2000, 9.68306% for 2001, 12.97355% for 2002, 16.3627565% for 2003, 20.15103% for 2004, (not yet available) % for 2005 - see Exhibit C to the MSA for a full explanation of the inflation adjustment calculation) and (2) adding the result to the base deposit amount.

Example:

If you sold 100,000 units in Tennessee in the year 2004, then the following formula would apply:

$$\begin{aligned}\text{Base deposit amount: } & 100,000 \times 0.0167539 = \$1,675.39 \\ \text{Adjusted deposit amount: } & (1) \$1,675.39 \times 0.02015102 \% = \$337.61 \\ & (2) \$1,675.39 + \$337.61 = \mathbf{\$2,013.00}\end{aligned}$$

You will need to contact the financial institution to provide the information required by #13. Remember your Certificate of Escrow Compliance is not complete without the necessary information so you may want to confirm with your financial institution that it has provided the required information.

Part III. Additional Information. Use additional paper as necessary to provide full and complete responses to each request for information.

Part IV. Signature and Verification of Applicant Representative. The signature must be notarized by an authorized notary public. The person signing as the authorized representative of the Applicant Tobacco Product Manufacturer must have the authority to bind the Applicant.

Any person who makes a false statement in the Certificate of Escrow Compliance or its attachments that he or she knows is false may be guilty of perjury set forth at Tenn. Code Ann. § 39-16-702 and possibly other criminal statutes.